

1 W. WEST ALLEN
Nevada Bar No. 5566
2 LEWIS ROCA ROTHGERBER
3993 Howard Hughes Parkway, Suite 600
3 Las Vegas, Nevada 89169
Telephone: (702) 949-8200
4 Facsimile: (702) 949-8365
wallen@lrlaw.com

5 STEVEN M. BAUER (*Pro Hac Vice*)
sbauer@proskauer.com
6 JOSEPH A. CAPRARO, JR. (*Pro Hac Vice*)
7 jcapraro@proskauer.com
PROSKAUER ROSE LLP
8 One International Place
Boston, MA 02110
9 Telephone: (617) 526-9600
Facsimile: (617) 526-9899

10 *Attorneys for Plaintiff*

11
12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 HYPERTHERM, INC.,

15 Plaintiff,

16 vs.

17 PROFILE CUTTING TECHNOLOGIES LTD.
18 et al.

19 Defendant.
20

Case No. 2:12-cv-1952-GMN-VCF

**PLAINTIFF HYPERTHERM, INC.'S
MOTION FOR LEAVE TO FILE
DECLARATION AND EXHIBIT A
UNDER SEAL**

21 Plaintiff Hypertherm, Inc. requests leave to file the Declaration of Joseph A. Capraro in
22 support of Plaintiff's motion for attorneys' fees and costs, and its corresponding Exhibit A
23 regarding attorney billing records and rates, under seal pursuant to Local Rule 10-5(b).

24 This motion is made and based upon the papers and pleadings on file herein, and such
25 oral argument as the Court deems appropriate.

26 **MEMORANDUM OF POINTS AND AUTHORITIES**

27 Plaintiff seeks an order granting leave to file its billing records and rates, and the
28 supporting declaration in support of its Motion for Attorneys' Fees and Costs, under seal. This

1 motion is necessary to protect the confidentiality of attorney billing rates and attorney work
2 product.

3 **I. LEGAL ARGUMENT**

4 The public interest in full disclosure of documents is limited to ensuring the "public's
5 understanding of the judicial process and of significant public events." *Kamakana v. City &*
6 *County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (quoting *Valley Broadcasting Co. v.*
7 *US. Dist. Ct.*, 798 F.2d 1289, 1295 (9th Cir.1986)). When a party requests to file documents
8 under seal, the Court must balance the compelling reason for sealing the document with the
9 public interest favoring disclosure. *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir.
10 2010). Documents will be sealed where compelling reasons "outweigh the general history of
11 access and the public policies favoring disclosure" *Kamakana*, 447 F.3d at 1178-1179.
12 Compelling reasons exist for sealing documents where their disclosure may "gratify private
13 spite, promote public scandal, circulate libelous statements, or release trade secrets."
14 *Kamakana*, 447 F.3d at 1179.

15 Further, under Nevada law, "a person has a privilege . . . to refuse to disclose and to
16 prevent other persons from disclosing a trade secret owned by him or her, if the allowance of the
17 privilege will not tend to conceal fraud or otherwise work injustice." Nev. Rev. Stat. § 49.325.
18 Courts have recognized billing rates as trade secrets. *See Courtesy Temporary Service, Inc. v.*
19 *Camacho*. 272 Cal. Rptr. 352, 358 (1990) (information that includes "billing rates, key contacts,
20 specialized requirements and markup rates, is sophisticated information and irrefutably of
21 commercial value and not readily ascertainable to other competitors.").

22 Here, Plaintiff must file with the Court detailed billing records and billing rates to support
23 its request for attorneys' fees and costs against Defendants. These records contain negotiated
24 billing rates for Plaintiff's attorneys, which is not information that is generally available to the
25 public or to Plaintiff's attorneys' competitors. Additionally, the billing records contain
26 descriptions of the work performed by Plaintiff's attorneys, which constitute confidential work
27 product and attorney-client communications.
28

1 Therefore, Plaintiff seeks to submit the attorney billing records and rates, and its
2 declaration in support of its motion that refers to these records and rates, under seal so as to protect
3 the confidential nature of the bills, yet give the Court the opportunity to conduct an *in camera*
4 review to assess whether Plaintiff's attorneys' fees and costs are reasonable.

5 **CONCLUSION**

6 Based upon the foregoing reasons, Plaintiff therefore respectfully requests the entry of an
7 order granting leave to file under seal the Declaration of Joseph A. Capraro and its Exhibit A in
8 support of Plaintiff's motion for attorneys' fees.

9 Dated this 27th day of January, 2014.

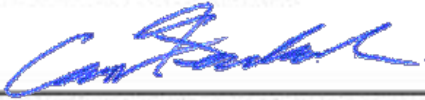
10 LEWIS ROCA ROTHGERBER

11 By W. West Allen
12 W. WEST ALLEN
13 Nevada Bar No. 5566
14 3993 Howard Hughes Parkway, Suite 600
15 Las Vegas, Nevada 89169
16 Telephone: (702) 949-8200
17 Facsimile: (702) 949-8365
18 wallen@lrlaw.com

16 STEVEN M. BAUER (*Pro Hac Vice*)
sbauer@proskauer.com
17 JOSEPH A. CAPRARO, JR. (*Pro Hac Vice*)
18 jcapraro@proskauer.com
19 PROSKAUER ROSE LLP
20 One International Place
21 Boston, MA 02110
22 Telephone: (617) 526-9600
23 Facsimile: (617) 526-9899

24 *Attorneys for Plaintiff*

25 IT IS SO ORDERED.

26 
27 UNITED STATES MAGISTRATE JUDGE
28 DATED: 2-14-2014

CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2014, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing on the CM/ECF registrants.

/s/ Judy Estrada
An Employee of Lewis and Roca